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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,233	02/19/2004	Ross Jonathan Hamel	008932-0726-999	7395
20583	7590	04/20/2005	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			COMSTOCK, DAVID C	
			ART UNIT	PAPER NUMBER

3732

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/783,233	Applicant(s) HAMEL, ROSS JONATHAN	
	Examiner David Comstock	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) 10-30,40,48-65,78-80,82 and 87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9,31-39,41-47,66-77,81 and 83-86 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Applicant's election of Species IV and Sub-species I, claims 1-9, 31-39, 41-47, 66-77, 88 and 83-86, in the reply filed on 10 February 2005 is acknowledged. Because applicant did not distinctly and specifically point out any potential or supposed errors in the restriction requirement, the election has been treated as an election **without** traverse (MPEP § 818.03(a)).

Claims 10-30, 40, 48-65, 78-80, 82 and 87 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and sub-species, there being no allowable generic or linking claim.

Priority

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence(s) of the specification or in an application data sheet by identifying the prior application by application number (37 CFR 1.78(a)(2) and (a)(5)). If the prior application is a non-provisional application, the specific reference must also include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figures 8 and 9 are not adequately legible. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

Claims 6, 9 and 32-36 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

Claim 6 depends from itself. For examination purposes, and as best understood, claim 6 will be treated as depending from claim 5.

Claim 9 depends from itself. For examination purposes, and as best understood, claim 9 will be treated as depending from claim 8.

Claim 32 depends from itself. For examination purposes, and as best understood, claim 32 will be treated as depending from claim 31.

Claim 34 depends from itself. For examination purposes, and as best understood, claim 34 will be treated as depending from claim 33.

Claim 35 depends from itself. For examination purposes, and as best understood, claim 35 will be treated as depending from claim 33.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 31-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 31, per se, it is unclear how a cylindrical bar can be a platform, which by definition should at least comprise a horizontal, flat surface (as, for example, is recited in claim 32).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 31-33, 35-39, 41-47, 66-68, 72-77 and 81-85 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell et al. (5,443,464).

Russell et al. disclose a reduction platform 22,42 and an elongated fragment manipulator 66 (see, e.g., Fig. 1). The reduction platform has a hole 46 with threads 62 on an outer surface thereof. The reduction platform comprises a substantially cylindrical bar 22 having flat portions. The fragment manipulator has a smaller diameter than the hole. The manipulator is engaged to the platform via means comprising a threaded

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engagement. The fragment manipulator has a self-drilling tip of increasing diameter (moving away from tip) and a tool-engaging end 60. A nut 56, 58 (having a spherical nose 56) engages the manipulator and the platform via the threaded interface. The nut is articulable in the hole. A support system comprises a support plate, e.g. 70, at either end of an arched member 12. A connection clamp 18 having bores is situated between the bar and the support member. A thumb wheel 52 comprising an internally threaded sleeve allows for adjustment of the bar 22 with respect to the support system. The method of using the device is inherent in the device, as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34, 69-71 and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. (5,443,464).

Russell et al. disclose the claimed invention except for explicitly disclosing a plurality of the arched members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an additional arched member, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock
18 April 2005



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